

FACTUAL HISTORY

On September 23, 2020 appellant, then a 45-year-old postal support employee, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 2020 she sprained her left wrist when lifting letter trays and sweeping mail into trays while in the performance of duty.² She stopped work on September 18, 2020 and returned to work on October 31, 2020. OWCP accepted the claim for strain of the left wrist and hand.

On December 16, 2020 appellant underwent a left wrist magnetic resonance imaging (MRI) scan, which demonstrated multiple cysts or erosions in the distal ulna, ulnar styloid process and carpal bones, but that the triangular fibrocartilage complex (TFCC) was within normal limits.

On August 11, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a July 13, 2022 report, appellant's treating physician, Dr. David P. Kalin, a Board-certified family practitioner, submitted an impairment rating of her left wrist in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).³ He diagnosed chronic left wrist TFCC sprain, ulnar impaction syndrome, and de Quervain's tenosynovitis. Dr. Kalin opined that appellant reached maximum medical improvement (MMI). He utilized the diagnosis-based impairment (DBI) rating method to find that under Table 15-3, (Wrist Regional Grid), page 396, the class of diagnosis (CDX) for TFCC tear with residual findings resulted in a Class 1, grade E, impairment with an impairment rating of 10 percent permanent impairment.

On September 22, 2022 OWCP routed Dr. Kalin's July 13, 2022 report, along with the case record, and a statement of accepted facts (SOAF) to Dr. David J. Slutsky, a Board-certified orthopedic surgeon, serving as an OWCP district medical adviser (DMA), for review and a determination of appellant's date of MMI and any permanent impairment of her left upper extremity under the sixth edition of A.M.A., *Guides*. It further requested that Dr. Slutsky review Dr. Kalin's July 13, 2022 report and provide an opinion discussing whether he agreed with its findings.

In an October 26, 2022 report, Dr. Slutsky discussed the findings in Dr. Kalin's July 13, 2022 report. He diagnosed left wrist sprain. Dr. Slutsky referred to the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 15-3 (Wrist Regional Grid), page 395, the CDX for appellant's left wrist sprain resulted in a Class 1 impairment with a default value of one percent. He assigned a grade modifier for functional history (GMFH) of 1, due to decreased strength, a grade modifier for physical examination (GMPE) of 1 due to diffuse wrist tenderness,

² OWCP assigned the present claim OWCP File No. xxxxxx948. It subsequently accepted a June 12, 2021 traumatic injury claim for impingement syndrome of the right shoulder under File No. xxxxxx121. On February 23, 2022 OWCP administratively combined appellant's claims with OWCP File No. xxxxxx948 serving as the master file.

³ A.M.A., *Guides* (6th ed 2009).

and a grade modifier for clinical studies (GMCS) of 1, based on the December 16, 2020 MRI scan. He utilized the net adjustment formula, which resulted in a grade C or one percent permanent impairment of the left upper extremity. Regarding the ROM impairment rating method, Dr. Slutsky indicated that the report of Dr. Kalin did not contain three measurements for the left wrist necessary to calculate an impairment rating by the ROM method. He concluded that Dr. Kalin's impairment rating was not performed according to the standards of the A.M.A., *Guides*. Dr. Slutsky found that appellant reached MMI on July 13, 2022.

By decision dated November 4, 2022, OWCP granted appellant a schedule award for one percent permanent impairment of the left hand (wrist). The award ran for 2.44 weeks from July 13 through 30, 2022.

On November 27, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a March 1, 2023 report, Dr. Kalin disagreed with the DMA and found that a TFCC tear was present. He determined that she had 10 percent permanent impairment of the left upper extremity due to this condition.

Following a preliminary review, by decision dated March 20, 2023, OWCP's hearing representative set aside the November 4, 2022 decision, and remanded the case for further development, to be followed by a *de novo* decision.

By *de novo* decision dated April 13, 2023, without further development, OWCP granted appellant a schedule award for one percent permanent impairment of the left arm. The award ran for 3.12 weeks from July 13 through 30, 2022 and from July 13 through August 4, 2022.

OWCP received an additional report from Dr. Kalin dated November 30, 2022 in which he again diagnosed TFCC tear and asserted that this condition was difficult to assess by MRI scan and was present based on appellant's clinical manifestations.

On May 2, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated August 23, 2023, OWCP's hearing representative set aside the April 13, 2023 decision, and remanded the case for further development, to be followed by a *de novo* decision on appellant's schedule award claim.

On September 26, 2023 OWCP requested that Dr. Kalin provide an additional impairment rating including upper extremity range of motion (ROM) measurements of the left wrist in accordance with the requirements of the A.M.A., *Guides*.

OWCP continued to receive medical evidence. In a September 13, 2023 report, Dr. Kalin provided ROM figures which he indicated were based upon three evaluations of the left wrist. He noted significant limitation in dorsiflexion and 50 percent less compared to the right. Dr. Kalin related that volar flexion was diminished by 25 percent, adduction was diminished by approximately 15 percent, and abduction was diminished by approximately 35 percent. He asserted that the measurements were performed three times, and each manifested a similar relationship. Dr. Kalin continued to opine that appellant's left upper extremity permanent impairment was 10 percent based on the DBI estimate of TFCC tear.

In response to OWCP's September 26, 2023 request, Dr. Kalin completed an October 4, 2023 report and related that he had examined appellant on September 13, 2023 and again opined that she had a permanent impairment rating of 10 percent of the left upper extremity. He referred appellant for a repeat MRI scan of the left wrist and noted that he would reexamine her in six weeks.

On October 11, 2023 OWCP routed Dr. Kalin's October 4, 2023 report to Dr. Slutsky serving as the DMA. On October 18, 2023 Dr. Slutsky reviewed this report and related that Dr. Kalin had not reexamined appellant, had not provided new information, and had not answered the questions posed by OWCP. He concluded that appellant's impairment rating remained unchanged.

OWCP subsequently referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Kevin Scott, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation under the standards of the sixth edition of the *A.M.A., Guides*.

Dr. Kalin completed an October 11, 2023 report and provided his ROM examination of appellant's left wrist, repeated on three measurements, which revealed dorsiflexion/extension of 20, 20, and 35 degrees, volar flexion/flexion of 40, 45, and 50 degrees, radial deviation of 15, 10, and 10 degrees, and ulnar deviation of 35-40, 20, and 25 degrees. He utilized Table 15-32 (Wrist Range of Motion), page 473, and determined that she had 3 percent permanent impairment due to less than 50 degrees of extension, 3 percent permanent impairment due to less than 50 degrees of flexion, and 2 percent permanent impairment due to less than 30 degrees of ulnar deviation, and 2 percent impairment due to 10 degrees of radial deviation, for a total ROM method rating of 10 percent permanent impairment of the left upper extremity.

In a report dated October 25, 2023, Dr. Kalin reviewed an October 16, 2023 left wrist MRI scan and diagnosed chronic appearing deformity of the distal ulna, likely post-traumatic, marked degenerative peripheral tear of the TFCC, and mild osteoarthritis of the distal radial ulnar joint. He opined that these conditions were causally related to appellant's September 18, 2020 employment injury. Dr. Kalin repeated his impairment ratings by both the DBI and ROM methodologies, finding that she had 10 percent permanent impairment of her left wrist.

On December 7, 2023 Dr. Scott examined appellant and reviewed the SOAF and the medical record. He provided that his ROM examination of her left wrist, repeated on three measurements, revealed dorsiflexion/extension of 45 degrees, volar flexion/flexion of 45 degrees, radial deviation of 10 degrees, and ulnar deviation of 20 degrees. Dr. Scott diagnosed TFCC tear of the left wrist. He utilized the DBI rating method to find that, under Table 15-3 (Wrist Regional Grid), page 396, the CDX for appellant's left wrist TFCC tear resulted in a Class 1 impairment with a default value of eight percent. Dr. Scott assigned a GMFH of 1 and a GMPE of 1. He utilized the net adjustment formula to find a grade C or eight percent permanent impairment of the left upper extremity. Next, Dr. Scott utilized the ROM method in accordance with Table 15-32, page 473, and determined that appellant had 3 percent permanent impairment due to 45 degrees of flexion, 3 percent permanent impairment due to 45 degrees of dorsiflexion, 2 percent for 10 degrees of radial deviation and 2 percent for 20 degrees of ulnar deviation, for a total of 10 percent permanent impairment of the left upper extremity. As the ROM method

resulted in the higher rating, he concluded that appellant had 10 percent permanent impairment of the left upper extremity. Dr. Scott reported that appellant reached MMI on December 7, 2023.

On January 4, 2024 OWCP routed Dr. Scott's December 7, 2023 report to Dr. Slutsky serving as the DMA. On February 11, 2024 Dr. Slutsky reviewed this report. He referred to the A.M.A., *Guides* at Table 15-3, Wrist Regional Grid: Upper Extremity Impairments, at page 396, and noted that the CDX of TFCC tear with residual findings, was a Class 1 permanent impairment with a default value of eight percent for the left upper extremity. Dr. Slutsky applied a GMFH of 1, a GMPE of 1, and a GMCS of 1. He calculated a net adjustment of 0. Dr. Slutsky found that the default value for grade C resulted in eight percent permanent impairment of the left upper extremity due to the DBI estimate of TFCC tear. He applied the ROM methodology from Table 15-32, page 473, and Table 15-23 and Table 15-33, page 477 and found that flexion of 45 degrees of flexion was three percent impairment, 45 degrees of extension was 3 percent impairment, 10 degrees of radial deviate was 2 percent impairment, and 20 degrees of ulnar deviation was 2 percent impairment, resulting in 10 percent permanent impairment of the left upper extremity. Dr. Slutsky explained that as the ROM rating method yielded the higher rating over the DBI method, appellant was entitled to a schedule award for 10 percent permanent impairment of the left upper extremity due to her wrist condition. He further opined that appellant had reached MMI on July 13, 2022, the date of Dr. Scott's examination. Dr. Slutsky noted that appellant had previously been awarded compensation for one percent permanent impairment of the left upper extremity and that the percentage provided includes the prior percentage awarded plus an additional nine percent upper extremity impairment.

By decision dated February 15, 2024, OWCP granted appellant a schedule award for an additional 9 percent permanent impairment of the left upper extremity (for a total of 10 percent). The period of the award ran for 28.08 weeks from August 5, 2022 through February 17, 2023.

On February 20, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a March 29, 2024 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for May 3, 2024 at 10:00 a.m. Eastern Standard Time (EST). The notice included a toll-free number and the appropriate passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant, however, neither appeared for the hearing nor requested postponement.

By decision dated May 15, 2024, OWCP found that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance but failed to appear. It further found that there was no indication in the case record that she had contacted OWCP's Branch of Hearings and Review either prior to, or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

OWCP issued FECA Bulletin No. 17-06 to explain the use of the DBI methodology versus the ROM methodology for rating of upper extremity impairments.⁸ FECA Bulletin No. 17-06 provides in pertinent part:

“Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify (1) the methodology used by the rating physician (*i.e.*, DBI or ROM) and (2) whether the applicable tables in Chapter 15 of the [A.M.A., *Guides*] identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A., Guides] allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.*” (Emphasis in the original.)⁹

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the wrist, the relevant portion of the arm for the present case, reference is made to Table 15-3 (Wrist Regional Grid) beginning on page 395. After the CDX is determined from the Wrist Regional Grid (including identification of a default grade value), the net adjustment formula is applied using a GMFH, GMPE, and/or GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ Under Chapter

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ FECA Bulletin No. 17-06 (issued May 8, 2017).

⁹ *Id.*

¹⁰ See A.M.A., *Guides* (6th ed. 2009) 405-12. Table 15-3 also provides that, if motion loss is present for a claimant with certain diagnosed wrist conditions, permanent impairment may alternatively be assessed using Section 15.7 (ROM impairment). Such an ROM rating stands alone and is not combined with a DBI rating. *Id.* at 397, 471-73.

2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹¹

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish greater than 10 percent permanent impairment of the left upper extremity, for which she previously received schedule award compensation.

OWCP referred the evidence of record to Dr. Scott for a second opinion permanent impairment evaluation. In a December 7, 2023 report, Dr. Scott used Table 15-3, at page 396 of the A.M.A., *Guides* and noted that for the CDX of TFCC tear with residual findings, appellant had a Class 1 impairment, with a default impairment rating of eight percent. He then applied the grade modifiers and, calculated a net adjustment of 0, which resulted in a grade C permanent impairment of eight percent of the left upper extremity. Dr. Scott provided his ROM examination of her left wrist, repeated on three measurements and determined that appellant had 3 percent permanent impairment due to 45 degrees of flexion, 3 percent permanent impairment due to 45 degrees of dorsiflexion, 2 percent for 10 degrees of radial deviation and 2 percent for 20 degrees of ulnar deviation, for a total of 10 percent permanent impairment of the left upper extremity. He concluded that appellant had 10 percent permanent impairment of the left upper extremity under the ROM rating method. Dr. Scott reported that appellant reached MMI on December 7, 2023.

OWCP properly referred the evidence of record to the DMA, Dr. Slutsky, for review and an impairment rating. In his report dated February 11, 2024, Dr. Slutsky concurred with Dr. Scott's permanent impairment calculations under both the DBI and ROM rating methods of the A.M.A., *Guides*. He explained that as the ROM rating method yielded the higher rating over the DBI method, appellant was entitled to a schedule award for 10 percent permanent impairment of the left upper extremity due to her accepted wrist condition. Dr. Slutsky further opined that appellant had reached MMI on July 13, 2022. He noted that appellant had previously been awarded compensation for one percent permanent impairment of the left upper extremity and that the percentage provided includes the prior percentage awarded plus an additional nine percent upper extremity impairment.

As there is no current medical evidence of record in conformance with the sixth edition of the A.M.A., *Guides* showing greater percentage than the 10 percent permanent impairment of

¹¹ *Id.* at 23-28.

¹² See *supra* note 7 at Chapter 2.808.6f (March 2017). See also *B.C.*, Docket No. 21-0702 (issued March 25, 2022); *D.L.*, Docket No. 20-1016 (issued December 8, 2020); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

the left upper extremity previously awarded, the Board finds that appellant has not met her burden of proof.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure, or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹³ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁴ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.¹⁵

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's February 15, 2024 schedule award decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a March 29, 2024 notice, OWCP's hearing representative informed appellant that she had scheduled a telephonic hearing for May 3, 2024 at 10:00 a.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.¹⁷ The Board has held that, absent evidence to the contrary, a letter properly

¹³ 20 C.F.R. § 10.616(a).

¹⁴ *Id.* at § 10.617(b).

¹⁵ *H.C.*, Docket No. 22-0047 (issued May 25, 2022); *C.H.*, Docket No. 21-0024 (issued November 29, 2021); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

¹⁶ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6g (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁷ *Id.*

addressed and mailed in the ordinary course of business is presumed to have been received.¹⁸ This is called the mailbox rule.¹⁹

Appellant failed to call in for the scheduled hearing at the prescribed time. She also did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned her request for an oral hearing.²⁰

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 10 percent permanent impairment of the left upper extremity for which she previously received schedule award compensation. The Board further finds that OWCP properly determined that she abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

¹⁸ *T.D.*, Docket No. 22-0705 (issued October 7, 2022).

¹⁹ *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020).

²⁰ *J.F.*, Docket No. 23-0348 (issued July 24, 2023); *T.B.*, Docket No. 23-0202 (issued May 16, 2023).

ORDER

IT IS HEREBY ORDERED THAT the February 15 and May 15, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 11, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board